

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:MSR:STX:AUS:TL-N-2464-00  
TRSealy

date: MAY 30 2000

to: Chief, Examination Division, South Texas District  
Attn: Manager, Group 1302 Stop 4320 SANW

from: District Counsel, South Texas District Stop 2000 AUS

subject: [REDACTED]  
Request for Advice on Statute Extension

This memorandum responds to yours dated April 18, 2000, requesting the captioned advice. We assume the facts to be as stated in that memorandum and do not restate them here. We also assume the following:

1. Under the principles of Treas. Reg. § 1.1502-75(d), the [REDACTED] consolidated group survived and incorporated Old [REDACTED] ("Old [REDACTED]") and all of its subsidiaries, except for [REDACTED] and its subsidiaries ("[REDACTED]"), into itself upon the merger [REDACTED]. Old [REDACTED] was renamed [REDACTED], and became a wholly-owned subsidiary of [REDACTED].
2. The Old [REDACTED] group terminated upon the merger [REDACTED]. A new group with [REDACTED] (renamed [REDACTED]) ("New [REDACTED]") as its common parent, comprised of [REDACTED] and its subsidiaries, came into existence upon the merger. The Old [REDACTED] group's final taxable year was the short taxable year beginning [REDACTED] and ending [REDACTED]. The New [REDACTED] group's first taxable year was the short taxable year beginning [REDACTED] and ending [REDACTED].

Regarding extending the period of limitations, Treas. Reg. § 1.1502-77(c) provides:

- (c) Effect of waiver given by common parent.--Unless the district director agrees to the contrary, an agreement entered into by the common parent extending the time within which an assessment may be made ... in respect of the tax for a consolidated return year shall be applicable--

- (1) To each corporation which was a member of the group during any part of such taxable year . . . .

Treas. Reg. § 1.1502-77T applies to situations (like ours) where the common parent ceases to be such, whether or not the group remains in existence (in our situation, it did not).  
Treas. Reg. § 1.1502-77T(a)(3) and (4) provide:

- (3) Waiver of statute of limitations. A waiver of the statute of limitations with respect to the group given by any one or more corporations referred to in paragraph (a)(4) of this section is deemed to be given by the agent of the group.
- (4) Alternative agents. The corporations referred to in paragraph (a)...(3) of this section are—
  - (i) The common parent of the group for all or any part of the year to which the ... waiver applies,
  - (ii) A successor to the former common parent in a transaction to which section 381(a) applies,
  - ..., or
  - (iv) If the group remains in existence under § 1502-75(d)(2) or (3), the common parent of the group at the time ... the waiver [is] given.


We read these two provisions as empowering Old [REDACTED] (now [REDACTED]) to waive the statute of limitations on behalf of all corporations for which it was the common parent for the taxable years in issue, [REDACTED] and [REDACTED]. These would include the Old [REDACTED] group as constituted for those taxable years, which included New [REDACTED] and those of its consolidated subsidiaries that were in the Old [REDACTED] group for those years. We thus concur that [REDACTED]'s signature on the consent will bind the latter as well as Old [REDACTED]'s subsidiaries (other than New [REDACTED] and its subsidiaries) that were members of the Old [REDACTED] group for those years. We also agree that it would be advisable to obtain the signature of [REDACTED] to rule out any argument that [REDACTED], lacked authority to execute the consent.

Regarding the name of the taxpayer to place on the Consent, the regulations do not address this subject. We believe that your proposal would be sufficient, however, we suggest the following:

[REDACTED], EIN [REDACTED]  
successor by merger to [REDACTED] EIN [REDACTED]  
[REDACTED] and its consolidated subsidiaries as  
constituted for the taxable periods specified below.

This completes our response to request for advice. We are forwarding a copy of this memorandum, and your request and attached materials, to our National Office for post review due to the technical nature of the questions presented. Please contact the undersigned with any questions or comments concerning this advice at (512) 499-5868.

LEWIS J. HUBBARD, JR.  
District Counsel

By:   
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Attorney